

**FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR
INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS &
RECREATION DEVELOPMENT / OTHER ECONOMIC
DEVELOPMENT AREAS) COMMITTEE**

A meeting of the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee of the County of Kaua'i, State of Hawai'i, was called to order by Mason K. Chock, Sr., Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, September 3, 2014, at 3:53 p.m., after which the following members answered the call of the roll:

Excused: Honorable Ross Kagawa
Honorable Mel Rapozo

Bill No. 2546 A BILL FOR AN ORDINANCE AMENDING CHAPTER
5A, KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO REAL PROPERTY TAXES (*Agronomics /
Agricultural Use Definition / Reporting*)
(This item was Deferred.)

Chair Chock: Councilmember Bynum.

Chair Chock: So just to clarify how many amendments and who has them?

Ms. Yukimura: I have one (1).

Mr. Bynum: I have one (1).

Chair Chock: So maybe we can take turns in introducing them.

Ms. Yukimura: I have a housekeeping one which I think we could...

Chair Chock: Okay, so we will start with you and then we will go to Councilmember Hooser and then Councilmember Bynum for circulation. I that okay?

Ms. Yukimura: As I understand it basically changed what was incorrect numbering. It was actually alphabets instead of numbers so it is just putting in the proper numbering.

Chair Chock: I am sorry. Is this page number 2, second to the last paragraph that we are looking at?

Ms. Yukimura: No it is the one that reads "Floor Amendment Introduced by JoAnn A.Yukimura, Bill No. 2546 Relating To Real Property Taxes, Agronomics, Et cetera."

Chair Chock: Okay, I got it pointed out to me. Thank you. We have a question for Councilmember Yukimura.

Mr. Bynum: I am just looking at what you circulated. It appears to remove number seven (7) not just renumber.

Ms. Yukimura: Because that is what the original...the Bill that I am amending so I am not changing the Bill at all. I am just changing numbers essentially.

Mr. Bynum: I have had it explained to me by staff. Sorry.

Mr. Hooser: Maybe I need it explained. I am sorry. If staff can explain it to me...

Chair Chock: Actually, Councilmember Yukimura if you could actually explain it I think it would be beneficial for everyone here.

Ms. Yukimura: Yes, now I will explain it since it has been explained to me. Page 3 of Bill. No. 2546, you will find that it has been misnumbered in the sense that capital letters have been used instead of what should be numbers and so it is just renumbering it, changing nothing else. The substance of the Bill remains the same.

Chair Chock: Thank you. Any other questions?

Ms. Yukimura: So perhaps we can vote?

Chair Chock: You want to vote on this one? It sounds like a housekeeping item so we will move...do we need a roll call for this one? No? Members, I am going to ask for testimony for this as well. I am guessing...do what we have to do. Go ahead.

Mr. Bynum: May I suggest that we introduce all of the amendments then take public testimony.

Chair Chock: Why do we not do that?

Ms. Yukimura: But this one I am thinking we can pass.

Mr. Bynum: We could pass this one.

Chair Chock: We are going to do them all. Okay? And then we are going to ask for public testimony. That is just in case anyone wants to speak on any of them, and then we will come back to all of them.

Mr. Furfaro: Young man, you are the Chair. You do what you want to do.

Chair Chock: Thank you. So can we go to Councilmember Hooser's amendment?

Mr. Hooser: Move to amend as circulated and it will be circulated...

Ms. Yukimura: You cannot make a motion while another motion is pending.

Chair Chock: Well let us move through this then. I guess process calls for a vote and we need to act on it. For Councilmember Yukimura's amendment we are going to take a vote on it first then we can come back to some more testimony on the whole Bill.

Councilmember Yukimura moved to amend Bill No. 2546 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Hooser, and carried by a vote of 3:0:2 (*Councilmember Rapozo and Councilmember Kagawa were excused*).

Mr. Hooser: Move to amend as circulated. It is being circulated now.

Ms. Yukimura: Point of inquiry. So do we actually make motions to amend? No? We should just circulate it and talk about it because the intention is not to do it today.

Chair Chock: That is correct. So we will just have a discussion on this second amendment and we are going to call for a deferral of the items. Councilmember Hooser, do you want to introduce this?

Mr. Hooser: Yes, I will explain that in a second. Okay, so if you look on page...it is not numbered but at the top of the third page and this goes to the definition of what we are impacting. So it adds item D which says "parcels that are used for the purpose of supporting the research and cultivation of living organisms that are regulated by the Federal government shall be classified as agronomics." So basically what does it mean when you say agronomics? Agronomics means occurs on parcels which are used for the purpose of supporting the research and cultivation of living organism that are regulated by the Federal government. So if any crop is not regulated, let us say tomatoes or lettuce or trees or any other agriculture product that is not regulated by the Federal government and is not involved with research does not apply. So this strictly means that this provision only applies to those parcels where there is research and cultivation of living organisms that are regulated by the Federal government. I think this really clarifies the issue in terms of...we had the discussion earlier on earning an income, generating money and what not. This section makes it much clearer and yes I will be happy to take questions.

Chair Chock: Okay, so my understanding is we have three (3) more amendments some of which kind of interconnect so I want to make sure that we are clear about where we need to focus in on.

Mr. Hooser: Okay. In addition on the page, item number 2 in addition to the name of the landowner because this has been a subject of confusion among the Property Tax Division in our discussions. Is that it also is the name of each licensee or lessee who is authorized to occupy the property for an excess of one (1) year. So this clarifies that section and I believe that is it.

Chair Chock: I am going to call this one number 1. Page 3, number 1 and number 2 on the last page. Is that correct?

Mr. Hooser: Yes but number 1 is repeated on the second to the last page at the top.

Chair Chock: I see that. Okay any further questions or discussions Members?

Mr. Bynum: Well let us see how the other one is going to be.

Chair Chock: Yes, so Councilmember Hooser, if you are done we will move to Councilmember Bynum.

Mr. Bynum: So while we are circulating that, Chair we are kind of struggling at this now but we had an opinion that we are probably not going to discuss till next week and I need maybe some guidance from the Chair or

staff about whether we can at the same meeting potentially vote to release that opinion to the public.

Ms. Yukimura:

We have in the past.

Mr. Bynum: We have in the past so I just think that...we cannot really discuss the nature of it today because it is confidential, right, but some of these amendments are based on those opinions so I just want to, process issue if we can...if we are moving all of this discussion to the next meeting if we can also have that at least the opportunity to release it if we chose to.

Mr. Bynum: Okay, thank you...but we can circulate because I am not a member of the Committee I would need to get a...if we were introducing it I would need and I had not...I do not remember if I talked to Councilmember Hooser but his name is on there now as the introducer.

Mr. Hooser:

Alright, I want to amend as circulated.

Ms. Yukimura:

No need for a motion.

Mr. Hooser:

Pardon.

Mr. Bynum: We are not going to amend. What I am saying is I think we can circulate it without...

Mr. Hooser:

Okay.

Chair Chock:

Since you are actually introducing why...

Mr. Bynum:

As soon as I get a copy of it I will.

Ms. Yukimura:

Me too. I need a copy.

Chair Chock: Okay, what we have is process issues here and what we have to do is there is a realization that we cannot circulate it because it becomes public at that point so if you like what we can do is we can hold off...

Mr. Bynum: fine. That can be public.

Let us circulate the amendment...that is

Ms. Yukimura:

We want it to become public.

Chair Chock: I am just being clear here. We want to make sure that it is okay to circulate it at this point and nothing else according to what your request was earlier.

Mr. Bynum:

Right, the amendment.

Chair Chock:

Okay.

Mr. Bynum: No problem. I mean I want it to be so that the public can digest it, so they and us can make informed choices on...

Mr. Furfaro: While you are passing that out I just want to make a point of order here. So since we will be deferring the Executive Session for the following week I want to make sure I understand that by the request of other Councilmembers I also have to put on the agenda the question about a release of those opinions. Am I understanding that correctly?

Chair Chock: That is correct.

Mr. Furfaro: Because today it was just to go into discuss them but I would need a new agenda item to release them if that is your plans. Okay. Thank you very much.

Chair Chock: Thank you. Councilmember Bynum.

Mr. Bynum: As I said earlier I was hoping we would circulate these because we may discover that there are some incompatibilities but this amendment is based on recommendations that were made to clarify, that is my understanding. I may discover when I read Councilmember Hooser's that there are some inconsistencies that we can deal with next week but this amendment was to add some language that was recommended by the County Attorney.

Chair Chock: What page are we looking at?

Mr. Bynum: Well it starts with and just in terms of what is here, agronomics is added as number 9 on page 1. On page 2 D is added that says "agronomics shall include all parcels which are used for science research and development of crops" and I can tell right now that is inconsistent with Councilmember Hooser's amendment. Then it adds clarifying language on the fifth page of what agriculture use shall not mean and it adds a definition of crop. As I said because of the Sunshine Law we do not see what the other amendments are and that is good and so there are portions of this that may still remain germane. Should we go a different direction with this definition? Other parts might be inconsistent but the purpose today was to just lay this out there so we can work on making them compatible.

Chair Chock: Can you explain the second to the last page of the amendment just for clarity and...

Mr. Bynum: I can read it. It adds the...this is to bring more clarity to questions that were brought up previously and it adds the definition crop which means produce that is raised, harvested, and sold to a consumer and includes produce such as sugar cane, pineapple, papaya, eggplant, beans, truck crops, grain or alfalfa, orchard crops, flowers, nursery or ornamental crops, but excludes (i) produce that is cultivated for science, research or development of crops or parent seed production and in the urban district, forage crops used for soilage,

silage, such as hale koa, I do not even know that next word, sorry. Pangola, kikuyu...

Ms. Yukimura:

Kukui.

Mr. Bynum: Oh, kukui, I know that word. Kukui and napier grass, which are deemed to be pasture usages within the urban district. So there have been questions previously about what was included and not included in the definition that says the consumer...that there is an end consumer and this was to bring further clarification to that and to answer those inquiries as I understand it.

Chair Chock: Okay and so for the...any questions or discussions Members on this amendment introduced...Go ahead Councilmember Hooser.

Mr. Hooser: I think Councilmember Bynum and I are kind of going towards the same place. The amendment that I proposed earlier says specifically that it is only the research that is regulated by the Federal Government as opposed to someone else, maybe the University of Hawai'i is doing some research, not genetic research necessarily but some other kind of research. It leaned towards somehow merging the two concepts at some point because it is just very clear that if the Federal Government requires you have a permit or is regulated as then that rises to a higher level and then let us say an orchid farmer trying to come up with a different color orchid by conventional means which could be construed as research.

Chair Chock:

Councilmember Bynum.

Mr. Bynum: If I could add to that, again this is Councilmember Hooser's and mine, which are results of the first meetings we had where people raised questions about how you define an end consumer, how do you...I was trying to be consistent with the current wording of the law which focuses on a product with the current law that, agriculture dedication law which is based on the value of the product produced on that. So I was trying to define research in terms of is there an end consumer. Well it was clear to me but it clearly was not clear to some farmers. There were also people saying that if you remove this word then it will impact this person that was not intended. So now that I see these two side by side I think Councilmember Hooser said in the first meeting if we want to be clear and not include these other ancillary and have to figure out all of the things that might fit under this definition if we are really talking about and to be honest there are the vast changes in land use that has happened here all of that land use happens under this Federal permit so we could simplify all of this by just focusing on that. That would make some of the language, I think in the original Bill either superfluous or not necessary or perhaps even inconsistent. I am convinced after this discussion that a much simpler and clearer way is to go the way Mr. Hooser is saying but I know that the Bill as currently placed will need some work. That is why I am saying let us do that during this week but I can say that I hear that testimony. Defining it this way is going to be a little complicated hence this amendment which would help to clarify it. If we are going a different direction that is really simple, because my understanding is only the seed companies here are currently using those permits. If there are things that are not authorized to be

grown without a permit as I understand it, I think it does focus it and makes it clearer and may eliminate some of the confusion that we heard earlier.

Chair Chock: Thank you. For the record, we have one (1) amendment that has been...a housekeeping amendment that has been approved and two (2) potential amendments that have been discussed of which will probably be introduced as a new amendment perhaps of which we will look at in the following week. So at this time...or do you have one (1) more amendment?

Ms. Yukimura: Yes.

Chair Chock: Alright Councilmember Yukimura.

Ms. Yukimura: This one is substantive so I am not going to move to amend at this time but I also want to just circulate as the other members have. So Ashley could you circulate that? To increase the options, I guess this is a amendment that offers another way of categorizing biotech research and it does not take it out of agriculture dedication but it creates another category for assessment of dedicated agriculture land and would, my intention, reflect the higher value that is reflected in the market of agricultural lands. So rather than having, when you take agriculture land out of agriculture dedication it is then assessed at highest and best use which is its development value and I believe that has all kinds of implications in terms of a pressure on farms to develop their lands. Similar to how we categorize vacant lands for multipurpose and other residential use and we are just reversing it now. So I am glad for the deferral because it has taken me a long time to try to precipitate my thinking on this and it still a work in progress but it will give us all a chance to take a look at it and to get input from all who are interested in this subject and it would reflect a higher value but it would still reflect an agriculture market value is the intention and it will also...two (2) weeks will also give us some chance to get some input from Finance-Real Property Tax Division. Anyway this is just an attempt. I must say that this is evidence that we do not talk to each other and we abide by the Sunshine Law because we are all sort of concocting amendments as we think about these issues and to have a deferral is a really good thing so everybody can take a look at these options and even possibly create hybrids out of them. So we will see what it comes up but any way I do not know all of the ramifications of going to highest and best use but I think we need to think them through before jumping to that.

Chair Chock: And just to clarify the proposal here is not a new tax classification it is just an assessment classification.

Ms. Yukimura: That is correct.

Chair Chock: For pasture, diversified agriculture versus biotech research.

Ms. Yukimura: Thank you. You are saying that better than I did.

Chair Chock: Are you through with the presentation?

Ms. Yukimura:

I am.

Chair Chock: Any questions, Councilmembers on this new amendment at this time? Okay, if not I would like to suspend the rules and I know the Director of Finance probably has not had a chance to take a look at this but to offer any guidance so Steve can you come up for a minute and we will go into public testimony right after this.

Mr. Bynum:

Chair.

Chair Chock:

Yes.

Mr. Bynum: I did not have questions for Councilmember Yukimura but I do have a comment or two (2) about that.

Chair Chock:

About this?

Mr. Bynum: Yes. I think it was clearly identified, I think in our first meeting and Councilmember Yukimura is responding to...that our current law does not really apply appropriately to these lands and there needs to be some kind of way to address that potentially so I understand this amendment and it would be good to digest it.

Chair Chock:
this time?

Any questions for our Director of Finance at

There being no objections, the rules were suspended.

Mr. Hooser: Good afternoon. You heard a little bit of the discussion. You probably have not seen the amendments or maybe not but I guess my question would be if you were able...if this is deferred, if you could also take these amendments, kind of digest them knowing where you believe the Council or certainly a number of members want to go with this maybe come up with some recommendation that might work best for you and for the Tax Department in terms of implementation and ease of understanding. If you could come prepared for that in two (2) weeks I think it would be helpful. Thank you.

Chair Chock: I wanted to just follow up. I know other amendments are out there but there was some discussion on valuation, soil valuation at one (1) point or another of which if you could follow up or if you would like to speak to that at this point.

STEVEN A. HUNT, Director of Finance: Sure. I guess there are a number of things that are still in play.

Ms. Yukimura:

State your name.

Mr. Hunt: I am sorry. Steven Hunt, Director of Finance for the record. There are a number of measures that are still in play, one (1) of them being the Important Agricultural Lands (IAL) and how the implementation of the IAL may impact both assessment and the designation of agriculture land throughout Kaua'i. So that certainly is something that is in the back of our minds and has to be addressed from an assessments stand point. Often there are entitlements that goes with that designation and where those entitlements go will also affect valuations of certain portions of those lands so as we develop an overall strategy on dealing with assessment of agriculture lands I think the IAL has to be at least considered in that analysis. The other one that Vice Chair Chock brought up are the soil ratings. These are not soil ratings that are mapped. They are in a very crude aspect but there are not metes and bounds surveys and they essentially establish where the best soil and the productivity on our island should occur. Typically A and B are the top soil ratings that we would anticipate more intense diversified type of agriculture use where as the soils that are rated on the lower class D and E typically are where you would expect to see more ranching. If we went to an evaluation based on soil rating we would anticipate seeing some of the movement on existing dedications to lands that are probably most suited for that specific use but it is not without consequence. Someone who currently has pasture land on type A or B would then essentially increase their assessment based on their soil rating. That would again try to incent or encourage more diversification on those types of lands where it probably should be occurring but again it would be a policy that would probably be a taxation policy that would be forcing some ranchers from lands that they probably vested in, in terms of putting in fencing and other capital improvements in that may be in the A/B class. So I am a little concerned about moving purely to a soil rating analysis and the other would be just from a logistical stand point. Taking those older maps that really are old in scale and have not been mapped to parcels and may have bifurcations or even multiple soil ratings within each tax map key (TMK) and trying to establish the agriculture dedications and uses across soil ratings that again are not well defined would be very problematic to implement. So although I think from a purely hypothetical standpoint it is probably the fairest measure that the soil would indeed probably determine where the best and the most productive agriculture would occur and that would have technically the highest agriculture use value. Some of the uses currently just do not match up with the soil ratings so again that would be problematic to implement.

Chair Chock: Thank you. Any further questions?
Councilmember Bynum.

Mr. Bynum: We just discussed this at the first meeting the ability to quantify the tax implications. Is there a chance we could get a better look at that in two (2) weeks. So for instance could we...I know we have not identified which portions of which TMKs are occupied by which lessess, correct?

Mr. Hunt: Correct.

Mr. Bynum: But we know which TMKs are going to be impacted by this because we have a list of those TMKs from the seed companies, right?

Mr. Hunt:
of seed companies.

I do not know if I have a complete list of all

Mr. Bynum: Maybe I will just ask...let me change this to say I will be talking to you in the next two (2) weeks about what ability we have to better quantify those numbers at this point. Thank you.

Chair Chock: Any further questions? Councilmember Yukimura.

Ms. Yukimura: So Steve, you would be able to assess value of lands based on market for similar lands, right?

Mr. Hunt: We do that now. So on a TMK by TMK basis we estimate the market value of those lands based on highest and best use and then if they are dedicated those portions that are dedicated and the uses they are dedicated for are identified and then there is a reduction in value in terms of the assessed value versus the market value.

Ms. Yukimura: But what I mean is I think in the law you have a reference to agriculture value based on use and so I presume that lease rents and those kinds of things factor into, and purchase of similar lands would factor into establishing market value, of agriculture market value.

Mr. Hunt: Of agriculture...right now any income based information and we seldom do get leases, copies of executed leases that include what the rents are actually being paid. Often that is redacted so we do not use any kind of an income based approach to establish the agriculture use value. Those are more based on the productivity of the type of use primarily broken into just two (2) types, diversified and ranching/pasture land.

Ms. Yukimura: But you have "petition shall include a legible copy of executed lease or license indicating consideration paid for licensee or license lessee."

Mr. Hunt: Normally that is only when the licensee is wanting to or the lessee is wanting to apply for the dedication. For the most part landowners apply for the dedication and that is not a requirement. They are absorbing the potential risk of roll back if there are breaches.

Ms. Yukimura: Okay, but if you are making a request of lessees you could make it a request of landowners too.

Mr. Hunt: It could be a request but unless it is a requirement we may not get that information.

Ms. Yukimura: That is what I mean you could make it a requirement.

Mr. Hunt: Until it becomes a requirement then that...

Chair Chock: I am sorry...are you done Councilmember Yukimura?

Ms. Yukimura: Yes.

Chair Chock: From an administrative perspective of the two (2) options that we are entertaining today what is easier to implement?

Mr. Hunt: Certainly the valuation. Creating a new class and trying to assemble information on each of those particular uses would be more problematic I think, just to implement.

Chair Chock: Okay. Further questions? Thank you so much, Steve for your time. At this time we would like to take public testimony. Anyone signed up for testimony? Is there anyone from the audience that would like to testify on this item? Please, Mr. Shigemoto.

TOM SHIGEMOTO: I do not know if my testimony is going to make much sense after the amendments that have been circulated but I do not think it will change our position anyway. So, Chair Chock and Members of the Kaua'i County Council, for the record my name is Tom Shigemoto. I am here testifying in opposition of this Bill and I represent Alexander & Baldwin (A&B). Alexander & Baldwin owns approximately seven thousand (7,000) acres of agricultural land on Kaua'i south shore of which more than four thousand (4,000) acres are leased to other parties for a variety of active agricultural uses including the cultivation of coffee and seed corn. In 2009 A&B was the first landowner in Hawai'i to voluntarily offer its lands for designation as Important Agriculture Lands (IAL) which included approximately three thousand seven hundred seventy-three (3,773) acres on Kaua'i. With its voluntary designation A&B is committed to keeping a significant portion of its Kaua'i landholdings in active agricultural production. This Bill establishes a new real property tax classification for lands primarily used for science research and the development of crops that do not directly pay monetary profit from the ultimate consumer. This Bill also amends the definition of agricultural use to exclude lands that are primarily used for the research and development of crops or parent seed production that do not directly gain monetary profit from the ultimate consumer. By excluding lands under cultivation for research and development of crops or parent seed production from the definition of agriculture use, it is our understanding that these lands will no longer be eligible for the lower real property tax assessments under a long term special agriculture dedication. It is anticipated that this exclusion will significantly increase the real property tax assessments and subsequent tax payments to these agriculturally zoned lands. For landowners dedicated to keeping significant portions of those land holdings in active agriculture production this Bill may create additional challenges in retaining agricultural lessees that are able to effectively utilize large tracks of lands for their agricultural operations. Of additional concern is that a portion of A&B owned lands affected by this Bill are presently designated as Important Agricultural Land. With Important Agricultural Lands committed to remain in agriculture for the long term, it is essential that farmers on these lands are able to effectively sustain their agricultural operations into the future. Land costs are a significant component in influencing the overall success of a farming

operation. Higher real property tax assessments and payments for IAL farmers will increase the ongoing cost of operations which may have a direct impact on the profitability and ability to maintain viable farming operations on IAL. We believe that large scale agriculture operations which include entities cultivating lands for the research and development of crops for parent seed production are an important component in sustaining a viable agricultural industry on Kaua'i.

LORI L. MARUGAME, Council Services Assistant: Three (3) minutes.

Mr. Shigemoto: By imposing additional financial challenges on these entities this Bill may result in some of these entities either scaling back their agricultural operations on Kaua'i or seeking to relocate to other jurisdictions with a more favorable real property tax and regulatory climate. Should any of these actions occur we believe that this Bill may have the unattended consequence of jeopardizing the long term viability and sustainability of Kaua'i's agricultural industry. Based on the aforementioned we respectfully request that this Bill be held in Committee. Thank you for the opportunity.

Chair Chock: We do have a question. Councilmember Yukimura.

Ms. Yukimura: Hi, Tom, thank you.

Mr. Shigemoto: You are welcome.

Ms. Yukimura: Your three thousand seven hundred seventy-three (3,773) acres are voluntarily designated IAL lands?

Mr. Shigemoto: Yes.

Ms. Yukimura: What crops are they being used for now?

Mr. Shigemoto: Basically it is all Kaua'i Coffee lands.

Ms. Yukimura: It is all Kaua'i Coffee lands?

Mr. Shigemoto: Yes.

Ms. Yukimura: Okay.

Mr. Shigemoto: And as I testified before there are pockets of seed corn on the not so good quality soil for coffee, that are close to the ocean. So the seed corn companies lease those lands from us.

Ms. Yukimura: Okay. Thank you.

Chair Chock: And Councilmember Hooser as well.

Mr. Hooser: Good afternoon. It has been a long day.

Mr. Shigemoto:

Yes.

Mr. Hooser: I want to kind of restate Councilmember Yukimura's question a little bit. So how much land approximately does your company lease, that would be impacted by something like this? How many acres?

Mr. Shigemoto: For seed corn I do not have that breakdown. As I said four thousand (4,000) acres are leased to other parties for...

Mr. Hooser: So a total of four thousand (4,000) acres are leased out to agriculture? I am just trying to get whether it is five (5) acres or whether it is one thousand (1,000) acres or...

Mr. Shigemoto: It is roughly...okay four thousand (4,000) acres...most of that is in coffee but again I do not know exactly what is leased by the corn companies.

Mr. Hooser: Okay, so most of the four thousand (4,000) would be to coffee.

Mr. Shigemoto:

Yes.

Mr. Hooser:

Three thousand (3,000) something?

Mr. Shigemoto: Three thousand (3,000), yes. Roughly three thousand (3,000).

Mr. Hooser: And then the type of leases, they are not month to month leases or year to year? They are long term leases, for the most part.

Mr. Shigemoto: They are not month to month. They are longer term. Some may be month to month but generally the seed corn...all of Kaua'i Coffee are long term lease but the seed corn company has, I believe five (5) year leases.

Mr. Hooser: any property taxes?

Okay and the leases allow a pass through of

Mr. Shigemoto:

Yes.

Mr. Hooser: So the point of my question is trying to figure out the likelihood of somebody leaving because their property tax was raised somewhat if they have investment in the property, they have a long term lease, the likelihood of sudden departure anyways is relatively slim?

Mr. Shigemoto: That is always a possibility. I am afraid of what happens if Kaua'i Coffee goes out of business and the seed company is still flourishing then who do we...what do we do with the lands and our income?

Mr. Hooser: So Kaua'i Coffee is not impacted by this but I understand what you are saying, that is a big number...a big tenant for you folks.

Mr. Shigemoto: That is correct.

Mr. Hooser: Thank you.

Chair Chock: Any more, other questions? Thank you so much for your testimony.

Mr. Shigemoto: Thank you.

Chair Chock: Anyone else that would like to testify?
Mr. Arakawa.

DAVID ARAKAWA: Good afternoon, Chair Chock and Members of the Committee. It has been a long morning and afternoon, I guess. Land Use Research Foundation is testifying in opposition to this Bill. I am Dave Arakawa. I am the Executive Director. We believe that this Bill and what it does with the definition of agricultural use, et cetera and increasing the taxes for basically Genetically Modified Organism (GMO) crops. Let us call it what it is, we believe. If I am wrong please let us know and if I am wrong then GMO crops can be excluded from this tax increase. There could be an amendment excluding GMO crops from this new Bill but if not, if there is not such exemption for GMO crops it is targeted at GMO crops and by targeting a certain type of crop it, as our testimony states it is in direct violation of the Hawai'i State Planning Act which includes and encourages growth and development of diversified agriculture throughout the State. It is also in violation and undermines the foundation and the underlying principles of the important agriculture lands law which encourages, again promoting diversified agriculture and requires incentives, incentives not penalties, not penalties or increase costs on diversified agriculture. Thirdly, you know I do not know how often this Council has talked about lawsuits, about legislations but if a landowner or if some type of agriculture producer has invested infrastructure or has designated their lands as IAL in substantial reliance on being able to produce GMO crops et cetera under the current law and the law can always change but that is going to be an issue in court if it ever gets there. The fourth issue and what seems to be most troubling is and I am not sure, I am not hear but in my discussions with the Farm Bureau it does not appear that there were discussions with respect to this Bill with our consensus, with Far Bureau or with the large agriculture landowners and we are talking about consensus as in the IAL law. It took five (5) years to work together to reach consensus on the IAL law between the farmers, landowners, and the department of agriculture and all of the major stakeholders. So that is troubling. Fifth, we have it as a footnote in our testimony and we honor and respect the Department of Corporation Council here on Kaua'i but there was that recent order on preemption in that GMO federal court order and we would think it would be prudent...we are not telling you what to do but normally a Council would ask their Corporation Council, "Hey, is this preempted also if it affects GMO crops?"

Ms. Marugame: Three (3) minutes.

Mr. Arakawa: And just in closing, there are just three or four (3 or 4) issues again, well I already talked about it. It appears to target our GMO projects, products, or crops. If not exclude it and to make the cost of doing business for GMO companies tough and while we appreciate the efforts and the drafts there is this guy, Bill (inaudible) who I work with at the City and he was involved with many plantations and his favorite saying was "you cannot put lipstick on a pig." "You cannot put lipstick on a pig." So if this legislation was meant to go...if and we do not know...if it was meant to go after GMO products or agriculture it does not make a difference how many acres or how many types of leases or any of those issues. It did not make a difference to the Federal court. It did not make a difference to the federal court how many leases were affected, how many acres were under cultivation. So that is our testimony and you know we appreciate the opportunity to testify.

Chair Chock: Thank you for your testimony. I am sure we have questions after that so we will go with Councilmember Hooser first.

Mr. Hooser: Yes, thank you. So are you saying this Bill is a pig? Is that what you are saying?

Mr. Arakawa: I am saying that if the intent was to and I said if...I do not know. If the intent was to go after GMO crops or go after GMO agricultural producers...if that was the actual intent and effect the amount of changing words or changing agriculture to the word crops or whatever...that is not going to fly. A judge is going see through that. But I do not know what the intent is.

Mr. Hooser: So if it targets that industry then it is a pig?

Mr. Arikawa: I did not say that it was a pig...

Mr. Hooser: So the Land Use Research Foundation, who are your clients on Kaua'i?

Mr. Arakawa: Clients on Kaua'i, Grove Farm, A&B, Kamehameha Schools has some land here, 'Ohana Hanalei, Princeville. I am pretty sure I am missing some but those are the ones that...

Mr. Hooser: So the largest landowners make up the Land Use Research Foundation, basically.

Mr. Arakawa: Yes.

Mr. Hooser: That is the organization.

Mr. Arakawa: Yes.

Mr. Hooser: And we talked to A&B a second ago and I asked them the percentage of land they lease out to companies that would be impacted so do you know how much land Grove Farm leases out?

Mr. Arakawa: No.

Mr. Hooser: You do not?

Mr. Arakawa: No.

Mr. Hooser: So you do not know if they would be impacted at all by this Bill?

Mr. Arakawa: They would be impacted if they decided to lease out...to lease their lands to somebody who comes under this statute. That is the whole thing about the law. Serving as core Counsel I never, ever, ever asked, Well how many exact acres or how many leases do you have?"

Mr. Hooser: I appreciate that.

Mr. Arakawa: I would say because if it is illegal it is illegal and I am not saying that it is illegal. A court...a judge would decide that.

Mr. Hooser: It has been a long day so if you could kind of focus on the question a little bit.

Mr. Arakawa: Okay.

Mr. Hooser: And try to be a little more concise in your answers, I would appreciate it.

Mr. Arakawa: Okay, I thought I answered that twice already but it does not matter how many acres. You can ask me how many acres till the cows go home.

Mr. Hooser: Mr. Arakawa, if you could let me ask the questions and then answer them I would appreciate it. So you are aware that our property tax law right now treats trees, diversified agriculture, and cattle ranching differently? Each one is different. You are aware of that, right?

Mr. Arakawa: If you say so, yes.

Mr. Hooser: No, I am asking if you are aware...

Mr. Arakawa: I do not know what difference it makes. If I am saying yes I am then what? If I say no...

Mr. Hooser: Mr. Arakawa, I am trying to...you are alleging that we are discriminating against one (1) segment of agriculture. I am asking are you aware that we have already as public policy three (3) different classifications of agriculture differently?

Mr. Arakawa: Yes.

Mr. Hooser: Okay. Thank you very much.

Chair Chock: Councilmember Bynum has a question as well.

Mr. Bynum: Nice to see you again, Dave. You are aware that this law, this agriculture dedication law is about us providing incentives. It is the County saying we are going to give you a tax break. You realize that, correct?

Mr. Arakawa: Correct.

Mr. Bynum: And so are you arguing that if the County chooses to decide that for a tax break for this use, we are not going to apply but for this use we are, that we are going to be preempted? Are you actually arguing that?

Mr. Arakawa: What I am saying are two (2) things, there should be a rational basis to do that and there may be a rational basis to treat different agricultural products differently so that may be. The second thing is there is a GMO opinion by a Federal court out there saying that it is preempted...the State preempts the area of GMO production so all I am saying is trust your Corporation Counsel, whoever you go to for advice.

Mr. Bynum: Actually the ruling Mr. Arakawa, and you know, says the State preempts the regulation of pesticides. That is what it says but let me ask a different question.

Mr. Arakawa: I have the opinion right here I can read it. It includes GMO.

Mr. Bynum: Let me ask a different question.

Mr. Arakawa: Well in that case you folks can regulate GMO if that is your reading.

Mr. Bynum: May I ask a different question?

Chair Chock: Let us stick to the question and answer so we can get through this.

Mr. Bynum: Are you aware that the seed companies do not produce a product?

Mr. Arakawa: No.

Mr. Bynum: Do the seed companies produce a product here on Kaua'i for sale?

Mr. Arakawa: Yes.

Mr. Bynum: Can you show me evidence of that?

Mr. Arakawa: I am not here to show evidence. I am not the seed company attorney but...

Mr. Bynum: You know I thought they had given up on this. You just acknowledged that most of the seed company's operations in the State of Hawai'i do not produce a product for sale.

Mr. Arakawa: No, I never said they do not produce...

Mr. Bynum: I am asking if you will you acknowledge that?

Mr. Arakawa: No.

Mr. Bynum: Okay.

Mr. Arakawa: Obviously they produce something that is for sale.

Mr. Bynum: Obviously? Then why do the United States Department of Agriculture (USDA) show virtually no increase in corn sales in the State of Hawai'i for the last twenty (20) years? Never mind, I am done.

Chair Chock: Thank you so much for your testimony. Anyone else would like to testify on this item?

The meeting was called back to order, and proceeded as follows:

Chair Chock: Councilmembers, any further discussion? I think we are moving to defer actually so if I could get...

Mr. Bynum: I will be brief. I am a non-committee member. I will be voting at the Council.

Chair Chock: Anyone else? Councilmember Bynum.

Mr. Bynum: We are just going to keep working on this very important Bill. What we discovered in our dialogue thus far is that we currently have a Bill that asks...a study was done to determine the value of the product that came off of diversified agriculture or ranching. So we know that this use, research use of the land that produces no product it just does not fit. That is why Councilmember Yukimura's first attempt at trying to address that, I think. This is a simple question that we are posing. We currently give tax incentives. Tax payers...other tax payers here pay for these goals and the goal has always been in this law, to keep agricultural land in production. I am simply posing the question we have these new uses, research uses that have lead to a very significant change on the impact on the community. Do we want to continue as a County to give the same tax subsidies to this use that we give to people who grow food or flowers or coffee? Kaua'i Coffee, I am thrilled that they have this agricultural subsidy. It has worked. It is helpful. I am just asking the question, do we want to give the same

subsidy to this research use that produces no product and does not even fit our Bill? That is a simple question. For Mr. Arakawa to come here and think that somehow the other legal matters we are dealing with are germane to this is just disingenuous. Thank you.

Chair Chock:

Councilmember Hooser.

Mr. Hooser: I think disingenuous is word for the closing of the afternoon, actually, also. To imply, I think this is for the public, because the public hears things and I think it is important for us to clarify the record for the public. They hear these accusations that we are targeting, or we are...it is against the law to do this kind of thing or we are going to wind up in court. I find it disingenuous...it is a good word. The County clearly has the legal authority over taxes, property taxes. We clearly have the legal authority to choose different classes, different uses, and designate them as such and set different rates and different styles of taxation. We do it for houses, we have residential, we have homestead, we have hotels, and we have been talking about timeshares. It is clearly in our preview to do this and to have this misinformation be spewed from the microphone is inappropriate. We are not raising anyone's taxes. To say that we are raising taxes, we are not. We are looking at tax categories; we are discussing the possibility of the possibilities. Anyway, particularly within our legal authority we do tax trees and cattle ranching and diversified agriculture differently. This is no different in my mind. Thank you.

Chair Chock:
Furfaro.

Any further discussion? Councilmember

Mr. Furfaro: I appreciate the commentary from Mr. Hunt and I guess on a separate note as I am not a member of this Committee I would probably like to meet with him to discuss exactly where we are at with some of the IAL lands as it relates to their use as we come across the line looking at what kind of tax application will people receive based on this commitment on identifying and dedicating certain parcels of land and those lands again being based on the A, B, and C grading of the land versus the soil types raises some new questions for me and I do not know that much about farming. The closest I get to that is...I want to end this on a light note is watching Green Acres with my girls in the morning. There is a pig named Arnold Ziffel and he wears lipstick so I really do not know how to tell those parts differently. If you ask me to look at him and define where the pork chop is and the loin I can but he looks pretty good in lipstick. Thank you.

Chair Chock:

Thank you, Chair.

Mr. Hooser: Yes, I want to thank the Chair for bringing a little levity, I guess it is called to the conversation. I thought we would have a very good day actually and then these last fifteen (15) minutes or so kind of spoiled it for me personally but I think it is important and it is a reminder for the Chair to keep our eye on the prize, keep our eye on the vision of the future. What we really want to do is find a way to diversify agriculture, provide opportunities for small farmers, for farmers who are really growing food and doing it in a positive manner and tax

people appropriately and equitably. I think that is what we are going to focus on and it is important to keep remembering that so thank you, Chair.

Chair Chock: If there is not further discussion I will entertain a motion to defer.

Mr. Furfaro: Before you do I do want to remind members if there is any intent to release some of these opinions please initiate a communication not only to the County Attorney but myself so that I can create an agenda item after we go into an Executive Session as a body and decide as a body to release, it has to be tied to a request on the Council posting. So I just want to send that out as a reminder and that is the duty of those who have asked for the County Attorney opinion. They should be really establishing what they want in a written communication, not just verbally. Thank you.

Chair Chock: And if I could just add to that, I know that there was a request for us to look at some of the options so we are looking forward to that from Steve in the near future as well. Thank you. Do we have a motion?

Upon duly motion made by Councilmember Yukimura, seconded by Councilmember Hooser, and carried by a vote of 3:0:2 (*Councilmember Rapozo and Councilmember Kagawa were excused*), Bill No. 2546, as amended was deferred.

The Committee proceeded on its agenda item, as shown in the following Committee Report which is incorporated herein by reference:

CR-FED 2014-30: on Bill No. 2548, Draft 1 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Time Share Tax Classification Proposal*) (**Approved as Amended.**)

There being no further business, the meeting was adjourned at 5:38 p.m.

Respectfully submitted,



Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on September 17, 2014:



MASON R. CHOCK, SR.
CHAIR, FED COMMITTEE